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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,403	12/12/2003	Richard Louis Arndt	AUS919990938US2	2116
35525	7590	08/25/2005	EXAMINER	
IBM CORP (YA) C/O YEE & ASSOCIATES PC P.O. BOX 802333 DALLAS, TX 75380			TANG, KENNETH	
			ART UNIT	PAPER NUMBER
			2195	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,403

Applicant(s)

ARNDT, RICHARD LOUIS

Examiner

Kenneth Tang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/12/03, 4/6/04, 7/26/04, 4/28/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 11-24 are presented for examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 09/589661 in view of Weitzsch et al. (hereinafter Weitzsch) (EP 0419723 A1).

3. Copending Application No. 09/589661 teaches the concepts of the application, namely receiving, at a hypervisor, a message from a one of a plurality of operating system images, executing within the data processing system, intended for a shared resource (*lines 8-12*); transmitting the new message to an external data processing system for presentation to a user (*sends the new message*) (*lines 8-12*). 09/589661 does not explicitly teach determining identities. However, Witzsch teaches a software coded message such as a request attached with

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identity codes (VMID) for transmission involving a hypervisor (*see Abstract*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of encoding the message and the identity into a new message into the existing messaging/requesting system involving a hypervisor because this would reduce complexity (*see Abstract*).

4. **Claims 12-24 are rejected for the same reasons as stated in the rejection of claim 11.**
5. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 11-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noel et al. (hereinafter Noel) (US 2002/0016891 A1) in view of Weitzsch et al. (hereinafter Weitzsch) (EP 0419723 A1).**

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7. As to claim 11, Noel teaches a method of providing separate copies of shared resources to each of multiple partitions within a data processing system, the method comprising:

receiving, at a hypervisor, a message (request) from a one of a plurality of operating system images, executing within the data processing system, intended for a shared resource ([0007]);

determining an identity of the one of the plurality of operating system images (can be identified from operating system instance ID) ([0051]);

transmitting the new message to an external data processing system for presentation to a user (passing messages over a communication network) ([0006]).

Noel fails to explicitly teach encoding the message and the identity into a new message. However, Witzsch teaches a software coded message such as a request attached with identity codes (VMID) for transmission involving a hypervisor (*see Abstract*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of encoding the message and the identity into a new message into Noel's messaging/requesting system involving a hypervisor because this would reduce complexity (*see Abstract*).

8. As to claim 12, Noel teaches wherein the shared resource is an operator panel ([0041]).

9. As to claim 13, Noel teaches wherein the shared resource is a system console ([0038]).

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10. As to claim 14, Witzsch teaches receiving (delivered) external data from the external data processing system; decoding (decoding done to determine delivered request with identity code) the external data to determine an input, an identity of the shared resource, and an intended one of the plurality of operating system images; and transmitting (delivering) the input to the intended one of the plurality of operating system images with an indication the identity of the shared resource from which the input corresponds (*see Abstract*).

11. As to claims 15, they are rejected for the same reasons as stated in the rejection of claims 11.

12. As to claims 16-18, they are rejected for the same reasons as stated in the rejection of claims 12-14.

13. As to claims 19, they are rejected for the same reasons as stated in the rejection of claims 11.

14. As to claims 20-21, they are rejected for the same reasons as stated in the rejection of claims 2-3.

15. As to claims 22, they are rejected for the same reasons as stated in the rejection of claims 18.

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16. As to claim 23, Noel teaches a system for partitioning shared resources (*Fig. 2, items 200, 208, 210, 212, etc.*), the system comprising:

a first data processing system (*Fig. 2, 200*) comprising:

a plurality of partitions each corresponding to separate one of a plurality of operating system images (operating system instances) (*Fig. 2, items 200, 208, 210, 212, etc.*);

a plurality of assignable resources ([0007]); and

a hypervisor for providing each partition a separate one of a shared system resource ([0007]-[0008]);

a second data processing system coupled to the first data processing system, wherein the second data processing system receives a message from the hypervisor (passing messages over a communication network) ([0006]-[0007]).

17. Noel fails to explicitly wherein the message indicates to which of the plurality of operating system images the message belong, and wherein the second data processing system displays the message to a user with an indication of the operating system image corresponding to the message. However, Witzsch teaches a software coded message such as a request attached with identity codes (VMID) for transmission involving a hypervisor, wherein the identity codes help to identify and select between images within virtual machines or processing processors (*see Abstract*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of wherein the message indicates to which of the plurality of operating system images the message belong, and wherein the second data processing system displays the message to a user with an indication of the operating system image corresponding to

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the message to the existing messaging/requesting system of Noel because this would reduce complexity (*see Abstract*).

18. As to claim 24, Witzsch teaches wherein the data processing system (input/output system), responsive to operator input for a specified one of the plurality of operating system images, sends encapsulated data, comprising the operator input and an indication of the corresponding operating system image, to the hypervisor, and wherein the hypervisor decodes the encapsulated data and sends the operator input to the corresponding operating system image (*see Abstract*).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kt
8/8/05


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SUPERVISORY PATENT EXAMINER
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